

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. _____

TJ VIETOR,

Petitioner,

v.

**GRANITE COUNTY JUSTICE COURT, the HONORABLE RICHARD
MOTTA, Presiding Justice of the Peace,**

Respondent.

PETITION FOR WRIT OF SUPERVISORY CONTROL

Original Proceeding Arising from the Granite County Justice Court, Granite County Montana, The Honorable Richard Motta presiding; Case Number: CR-2010-0000018, "Granite County Justice Court, Plaintiff, v. TJ Vietor, Defendant"

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Respondent

On Behalf of Petitioner

TABLE OF CONTENTS

	<u>Page</u>
Introduction.....	1
Statement of the Issues	1
Background.....	2
Argument	4
I. A justice of the peace may not require a person to appear before the justice to show cause why the person should not be held in contempt without providing the person with a statement of facts upon which alleged contempt is based	4
II. A justice of the peace may not find a person in contempt for criticism of the manner in which the justice of the peace handles orders of protection or for advising some persons seeking orders of protection to seek those orders in other courts	7
Conclusion	10
Certificate of Compliance.....	11
Certificate of Service	11
Appendix of Exhibits	

TABLE OF AUTHORITIES

	<u>Page</u>
 <u>Cases</u>	
<i>Butterworth v. Smith</i> , 494 U.S. 624, 632, 110 S.Ct. 1376, 1381, 108 L.Ed.2d 572 (1990).....	8
<i>Gentile v. State Bar of Nevada</i> , 501 U.S. 1030, 1035, 111 S. Ct. 2720, 2725 (1991).....	8
<i>In re Oliver</i> , 333 U.S. 257, 270-271, 68 S.Ct. 499, 506-507, 92 L.Ed. 682, 695 (1948).....	8
<i>Kauffman v. Montana Twenty-First Judicial District</i> , 1998 MT 239 ¶ 26, 291 Mont. 122, 129, 966 P.2d 715, 719 (1998).....	5
<i>Landmark Communications, Inc. v. Virginia</i> , 435 U.S. 829, 838-839, 98 S.Ct. 1535, 1541-1542, 56 L.Ed.2d 1 (1978)	8
<i>Malee</i> , 275 Mont. at 76, 911 P.2d at 833	5
<i>Richmond Newspapers, Inc. v. Virginia</i> , 448 U.S. 555, 575, 100 S.Ct. 2814, 2826, 65 L.Ed.2d 973 (1980).....	8
 <u>Statutes</u>	
First Amendment, United States Constitution.....	7,8,9,10,11
Article VII, Section 5, Montana Constitution	9
Section 3-1-401, Montana Code Annotated	9
Section 3-1-512, Montana Code Annotated	5,7,11
 <u>Rules</u>	
Rule 14(3), Montana Rules of Appellate Procedure	6

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PETITION FOR WRIT OF SUPERVISORY CONTROL

INTRODUCTION

Petitioner, TJ Vietor (TJ), requests a writ of supervisory control and an immediate stay on the Justice Court action in this matter to prevent Granite County Justice of the Peace Richard Motta (Motta) from proceeding with a hearing, now scheduled for Friday, August 13, 2010 on whether or not she should be found in contempt.

STATEMENT OF THE ISSUES

I. May a justice of the peace require a person, in this case a victim witness advocate, to appear to show cause why the advocate should not be found in

contempt without providing the advocate with a statement of facts upon which the alleged contempt is based?

II. May a justice of the peace find a person, in this case a victim witness advocate, in contempt for criticizing the justice of the peace's handling of orders of protection and for advising some persons seeking orders of protections that they would be better served by seeking such orders in other courts?

BACKGROUND

The proceedings below began with an Order to Show Cause, directing TJ to appear and show cause why she should not be found in contempt, issued by Motta in Granite County Justice Cause No: CV-2010-0000142-OP, *Bradshaw v. Linse*. A copy of the Order was mailed to TJ's Post Office Box on Wednesday, August 4, 2010 with the matter set for hearing for Monday, August 9, 2010 at 1:30 p.m. A copy of the Order is attached hereto as Exhibit A.

TJ did not pick up her mail on August 9, 2010 until after 1:30 p.m. and, because she was unaware of the hearing, did not attend. On August 9, 2010, a second Order to Show Cause was issued by Motta directing TJ to appear on August 13, 2010 at 1:30 PM to show cause why she should not be found in contempt. That Order was issued in Granite County Justice Court Cause No: CR-2010-0000018, *Granite County Justice Court v. TJ Vietor*. A copy of that Order is attached as Exhibit B.

Neither Order to Show Cause was accompanied by a statement of facts or any other documentation even hinting at the reasons Motta might believe that TJ was in contempt of his court. When the undersigned attempted to further investigate the basis for the Orders by requesting that the Granite County Attorney's office obtain copies of the files in *Bradshaw v. Linse* and *Granite County Justice Court v. TJ Vietor*, the Justice Court's secretary, reportedly acting at Judge Motta's direction, declined and failed to make the files available.

Subsequently, the undersigned (who is representing Granite County in unrelated litigation brought by Motta against Granite County related to salary, reimbursement of expense, staff and budget) spoke with Judge Motta regarding the Orders to Show Cause.

In the course of that conversation, Motta indicated that he felt that the Petitioner acting as a victim witness advocate was undermining the court by speaking out during the primary election criticizing his handling of orders of protection, and by advising certain persons interested in obtaining orders of protection that they would be better served by seeking the order of protection in some other court because of the manner in which Motta dealt with orders of protection.

Whether or not these complaints are in fact the basis for the Orders to Show Cause is conjecture at this point, since no statement of the facts which Judge Motta

apparently believes may give rise to contempt has been made available to TJ, who has been ordered to appear, under threat of arrest, to answer whatever charges Judge Motta may choose to level at the Show Cause Hearing.

If the Show Cause Hearing is not stayed and the current Order to Show Cause not quashed, TJ will be required to appear before Judge Motta to respond to unknown charges. If Judge Motta's conversational comments on the grounds for Show Cause Hearing are in fact the basis for the Show Cause Hearing, TJ would have to either recant her honest beliefs regarding Judge Motta's handling of orders of protection and promise not to give honest advice to persons seeking orders of protection, or risk fine or imprisonment. These are not choices any judicial officer should have the power to impose on a citizen.

ARGUMENT

I. A justice of the peace may not require a person to appear before the justice to show cause why the person should not be held in contempt without providing the person with a statement of facts upon which alleged contempt is based.

The entire course of conduct undertaken by the justice of the peace in this matter is repugnant to the Constitutions of the United States and the State of Montana, to the laws of the State of Montana, and to any concept of justice that has evolved beyond the Court of the Star Chamber.

In this case, a person has been ordered to appear, upon pain of arrest (see Exhibits A and B) to defend herself against unspecified charges that she is in

contempt of court. That such a procedure does not comport with the requirements of law was clearly established by this Court in *Kauffman v. Montana Twenty-First Judicial District*, 1998 MT 239 ¶ 26, 291 Mont. 122, 129, 966 P.2d 715, 719 (1998), which held:

...this Court has always been vigilant to insure that due process is properly accorded to the person charged. We have held that in constructive or indirect contempt proceedings, the following due process requirements must be followed:

That one charged with contempt of court be advised of the charges against him, have reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel and have a chance to testify and call other witnesses in his behalf, either by way of defense or explanation.

Malee, 275 Mont. at 76, 911 P.2d at 833 (citing *In re Oliver* (1948), 333 U.S. 257, 275, 68 S.Ct. 499, 508, 92 L.Ed. 682, 695). Additionally, we have held that a court must follow the affidavit or statement of facts procedure set forth in § 3-1-512, MCA.

In this case, the procedure followed by Judge Motta fails at the first step of due process, in that the charged party, TJ, the Crime Victim Advocate, has no indication what the charges against her consist of factually, and no indication as to how whatever facts may exist constitute contempt.

Beyond any question, if Judge Motta believes he can in fact proceed in this manner, he is proceeding under a grave error of law, which is totally inexplicable since even a cursory examination of the statutes governing contempt would have told him that a statement of facts under § 3-1-512 MCA was required for any

contempt citation involving indirect contempt. Permitting Judge Motta to proceed under this serious error of law will result in a grave injustice to TJ, who will be required to appear before Judge Motta, required to answer any questions he may put to her on any subject, and will subject her to the risk of fine and/or imprisonment if her answers displease him.

Under Rule 14(3), Montana Rules of Appellate Procedure, a writ of supervisory control may issue when circumstances exist that make the normal appeal process inadequate, the case involves purely questions of law, and the lower court is proceeding under a mistake of law and is causing a grave injustice. In this case the normal appeal process is clearly inadequate, in that the harm will be done before any remedy can be fashioned if the Show Cause Hearing is allowed to proceed. TJ will have been subjected to interrogation, threats, and perhaps imprisonment before any remedy -- be it appeal, habeas corpus, or supervisory control by this Court -- can be had. The question of whether a person can be required to appear on an order to show cause why they should not be found in contempt without being given a statement of charges is a purely legal question. The actions of Judge Motta, proceeding without a statement of charges, are clearly an error of law. This error of law will result in grave injustice to person charged with contempt, in that she will be required to appear and defend without knowing what the charges are, at the risk of imprisonment.

The behavior of Judge Motta is bullying, pure and simple. It calls our entire system of government, and the judiciary in particular, into disrepute; and it should be stopped summarily. This Court should stay the hearing set for Friday, August 13, 2010 pending further Order of this Court and issue its writ of supervisory control directing Judge Motta not to proceed further with any contempt citation until he has complied with the requirement imposed by the due process clauses of the United States and Montana Constitutions and set out in §3-1-512 MCA -- that he give notice to the person charged with contempt of the factual basis upon which that charge is based.

II. A justice of the peace may not find a person in contempt for criticism of the manner in which the justice of the peace handles orders of protection or for advising some persons seeking orders of protection to seek those orders in other courts.

If criticism of the manner in which courts handled particular cases or issues was a basis for a contempt citation, our jails could be filled with newspaper editors, law school professors, and persons foolish enough to run against a sitting judge. While there may be a certain charm in that thought for judges who have been blasted in the press, subjected to a critical law review article, or suffered the unjustified comments of a political opponent, it simply is not our law and runs counter to our cherished First Amendment rights.

While we do not know beyond conversation what Judge Motta is basing his Show Cause Order on, it is clear that, if the Order is based on criticism of his court,

it cannot stand. As the United States Supreme Court observed in *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1035, 111 S. Ct. 2720, 2725 (1991):

There is no question that speech critical of the exercise of the State's power lies at the very center of the First Amendment. Nevada seeks to punish the dissemination of information relating to alleged governmental misconduct, which only last Term we described as "speech which has traditionally been recognized as lying at the core of the First Amendment. *Butterworth v. Smith*, 494 U.S. 624, 632, 110 S.Ct. 1376, 1381, 108 L.Ed.2d 572 (1990).

Gentile involved restrictions that were imposed on attorney speech by a bar association, but the principles stated are clear that, absent some immediate threat to the conduct of a pending case, comments on and criticism of the courts is protected. As the Supreme Court went on to say in *Gentile*:

The judicial system, and in particular our criminal justice courts, play a vital part in a democratic state, and the public has a legitimate interest in their operations. See, e.g., *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 838-839, 98 S.Ct. 1535, 1541-1542, 56 L.Ed.2d 1 (1978). "[I]t would be difficult to single out any aspect of government of higher concern and importance to the people than the manner in which criminal trials are conducted." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 575, 100 S.Ct. 2814, 2826, 65 L.Ed.2d 973 (1980). Public vigilance serves us well, for "[t]he knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power.... Without publicity, all other checks are insufficient: in comparison of publicity, all other checks are of small account." *In re Oliver*, 333 U.S. 257, 270-271, 68 S.Ct. 499, 506-507, 92 L.Ed. 682 (1948).

Far from being contemptuous, criticism of the manner in which the judiciary exercises its powers is one of our most cherished and important rights.

In this case, even if criticism of the court was not protected by the First Amendment, Judge Motta still would not have the power to cite for contempt for criticism that occurred outside his court. While justice courts are recognized in the Constitution by Article VII, Section 5, that same section provides that "Justice Courts shall have such original jurisdiction as may be provided by law."

With regard to a justice court's power to punish for contempt, the Legislature has provided by law, in §3-10401 MCA, that:

A justice of the peace may punish for contempt persons guilty of only the following acts:

(1) disorderly, contemptuous, or insolent behavior toward the justice while holding the court tending to interrupt the due course of a trial or other judicial proceeding;

(2) a breach of the peace, boisterous conduct, or violent disturbance in the presence of the justice or in the immediate vicinity of the court held by the justice tending to interrupt the due course of a trial or other judicial proceeding;

(3) disobedience or resistance to the execution of a lawful order or process made or issued by the justice;

(4) disobedience to a subpoena duly served or refusal to be sworn or to answer as a witness;

(5) rescuing any person or property in the custody of an officer by virtue of an order or process of the court.

Under this section, which establishes the contempt powers of a justice court, it is clear that a justice court's powers to punish for contempt are limited to the

enumerated areas and that a justice court has no power to punish, as contempt, criticisms made outside the presence of the court.

If Judge Motta should suggest in his return to this Court that he has the power to punish, as contempt, criticisms of his court made outside the presence of the court, that suggestion must be rejected both on the grounds that such comments are protected by the First Amendment and on the grounds that justice courts are not given the power to punish such actions as contempt in any event.

To the extent, if any, that Judge Motta is proceeding on his stated grounds to punish, as contempt, criticisms of his handling of particular cases, he is proceeding under a mistake of law; and to allow him to require TJ to appear before him and either recant or justify those criticisms under threat of imprisonment is a grave injustice which both threatens her First Amendment rights and calls the judiciary into discredit. There is no remedy for the wrong that TJ will suffer if Judge Motta proceeds on this basis. This Court should stay the hearing set for August 13, 2010 and issue its writ of supervisory control prohibiting Judge Motta from proceeding with a contempt citation based on criticism of his court.

CONCLUSION

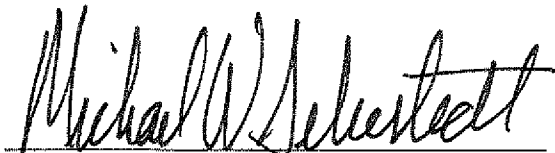
Judge Motta is proceeding under two mistakes of law -- one apparent from the face of his Show Cause Orders requiring that TJ appear and show cause why she should not be found in contempt; and one based on his stated basis for the

issuance of the Orders. The Order to Show Cause is deficient on its face, because it does not give the Petitioner notice of the facts upon which the charges are based, in violation of both constitutional due process and § 3-1-512 MCA. It is further in error if issued on his conversationally-stated basis, which is criticism of the manner in which the court handled certain cases -- in which case it is in violation of both Petitioner's First Amendment rights and in excess of the Justice Court's contempt powers.

This Court should stay the pending hearing and issue its writ of supervisory control requiring Judge Motta to state facts upon which he wishes a response in his Order to Show Cause, prohibiting him from issuing a contempt citation on out-of-court criticism of his court.

RESPECTFULLY SUBMITTED this 13th day of August, 2010.

MACO Legal Services
Attorneys for Petitioner

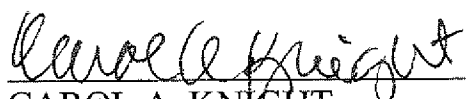
By: 
MICHAEL W. SEHESTEDT

CERTIFICATE OF SERVICE

I hereby certify that, on this 13th day of August, 2010, a true and correct copy of the foregoing was deposited in the United States mail, postage prepaid, addressed to the following:

Richard Motta, Justice of the Peace
Granite County Courthouse
Post Office Box 356
Philipsburg, MT 59858-0356

and by E-mail: rmotta@mt.gov



CAROL A. KNIGHT

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(e) , Mont.R.App.P., I certify that this Petition is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word 2007 is 2,641 excluding Certificate of Service and Certificate of Compliance.



CAROL A. KNIGHT